IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 32233 of 2006(K)

OS.591/2006 of SUB COURT,ERNAKULAM

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PETITIONER:

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1. PARUKUTTY KUNJAMMA,
   W/O.LATE SRI.RAMA PANICKER, VALAVAKKATT HOUSE,
   THENGODE P.O., KOCHI-30.

2. V.R.MURALEEDHARAN ELAYIDOM,
   S/O.LATE SRI RAMA PANICKER,
   VALAVAKKATT HOUSE, THENGODE P.O. KOCHI-30.

3. V.R.MOHANAN ELAYIDOM,
   S/O.LATE SRI.RAMA PANICKER,
   VALAVAKKATT HOUSE, THENGODE P.O., KOCHI-30.

4. V.R.SURAYAKUTTAN ELAYIDOM,
   S/O.LATE SRI.RAMA PANICKER, MANOJ VIHAR,
   PERINGAZHA KARA, HMT COLONY P.O., KALAMASSERY.

BY ADV. SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH
SRI.S.GOPINATHAN

RESPONDENTS:

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1. V.K.GOPINATHAN ELAYIDOM, AGED 62 YEARS,
   S/O.LATE SRI.RAMA PANICKER, VALAVAKKATT HOUSE
   SMITHA BHAVAN, THENGODE P.O., KOCHI-30.

2. V.R.SASIDHARAN ELAYIDOM,
   S/O.LATE SRI.RAMA PANICKER, VALAVAKKATT HOUSE,
   THENGODE P.O., KOCHI-30.

3. JALAJA S.PANICKER, AGED 51 YEARS,
   S/O.SASIDHARA PANICKER,
   PRAVI SADAN, PUTHIYA ROAD, VADACODE P.O.

4. RAMANI RADHAKRISHNAN, AGED 47 YEARS,
W/O.RADHAKRISHNAN NAIR,
MADATHIL HOUSE, THIRUMARADI P.O.,
ERNAKULAM DISTRICT.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32233 OF 2006

Dated 7th December 2006

JUDGMENT

Petitioners are defendants in O.S.591/2006 on the file of Sub court, Ernakulam. Respondents are plaintiffs. Suit was filed seeking a decree for declaration that sale deed No.3210/06 of Sub Registry Office, Thrikkakara got executed by eighth defendant is illegal, null and void as it is vitiated due to mental incapacity of eighth defendant and for a consequential relief of decree for prohibitory injunction. This petition is filed under Article 227 of Constitution of India contending that as eighth defendant is alive, respondents have no right to institute the suit and learned Sub Judge has appointed a commission to find out the mental capacity of eighth defendant which is illegal and it is an abuse of process of the court and therefore the entire proceedings in O.S.591/2006 are to be quashed exercising the supervisory jurisdiction of this court under Article

227 of Constitution of India. Learned counsel appearing for petitioners vehemently argued that whether respondents have a cause of action to institute the suit should have been considered by the court at the very threshold and as there is no cause of action the suit should have been rejected as provided under Rule 11 Order VII of Code of Civil Procedure and as the entire proceedings is vitiated the suit and the proceedings are to be quashed.

2. On hearing learned counsel appearing for petitioners, I do not find that it is a matter which warrants interference by this court in exercise of the supervisory jurisdiction under Article 227 of Constitution of India. True, as rightly pointed out by learned counsel appearing for petitioners trial court is bound to consider whether the plaint discloses a cause of action and whether the suit appears from the statement in the plaint to be barred by any law and if satisfied, the plaint shall be rejected as provided under Rule 11 of Order VII of the Code. Apex court in **Saleem Bhai v. State of Maharashtra (AIR 2003 SC 759)** considered the question whether the direction to file the written statement without considering the plea of the

defendant to reject the plaint under Order VII Rule 11 was legal. Setting aside the directions of the High court of Madhya Pradesh their Lordship held.

> "A perusal of O.VII, R.11, C.P.C makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under O.VII, R.11, C.P.C at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Cls. (a) and (d) of R.11 of O.VII, C.P.C, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under O.7, R.11, C.P.C cannot but be procedural irregularity touching the exercise of jurisdiction by

> the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High court, however did not avert to these aspects."

3. Even before filing the written statement petitioners are entitled to file an application before learned Sub Judge to decide the question whether the plaint is liable to be rejected on any of the grounds provided under Rule 11 of Order VII of Code of Civil Procedure. If such an application is filed, learned Sub Judge has to consider the same and pass appropriate orders in accordance with law expeditiously and petitioners are entitled to file the written statement thereafter. In view of the time limit prescribed for filing the written statement, under Rule 1 of Order VIII of the Code of Civil Procedure learned Sub Judge is directed to pass the orders expeditiously without any delay.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.